Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1995

JERRY BOYETT, A MINOR CHILD,
SUING BY HIS FATHER AND NEXT
FRIEND, WAYNE BOYETT,

Petitioner,

v.

LALAR TOMBERLIN, JIM HEAD,
SAMMY CARR, and CRENSHAW COUNTY
BOARD OF EDUCATION,

Defendants.

ON PETITION FOR WRIT OF CERTIORARI
To The Supreme Court of the State of Alabama

PETITION FOR WRIT OF CERTIORARI

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21 pp

QUESTION PRESENTED

Whether 42 U.S.C.A. § 1983 and the Due Process Clause of the Fourteenth Amendment guarantee a public school student the right to be excused from a classroom upon request when there is a bona fide and urgent need for him to use the toilet and such asserted reason is made known to the teacher and school authorities who have no specific and articulable reason to deny the request.

PARTIES

The caption of the case contains the names of all the parties to this proceeding in the court whose judgment is sought to be reviewed.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

Jerry Boyett, a minor child, suing by his father and next friend, Wayne Boyett,

Petitioner,

vs.

Lalar Tomerlin, Jim Head, Sammy Carr, and Crenshaw County Board of Education,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of the State of Alabama

Petitioner, Jerry Boyett, prays that a writ of certiorari issue to review the judgment of the Alabama Court of Civil Appeals and Writ of Certiorari denied by the Alabama Supreme Court, and that on hearing the judgment be reversed.

OPINIONS BELOW

The opinions of the Alabama Court of Civil Appeals and the Alabama Supreme Court are not yet reported.

JURISDICTION

The original trial court, the Circuit Court of Crenshaw County, Alabama, entered its order granting summary judgment in favor of the defendants on April 17, 1995. The Alabama Court of Civil Appeals rendered its opinion affirming the judgment of the trial court on December 12, 1996. The Alabama Supreme Court entered its judgment denying certiorari without written opinion on May 31, 1996. This Court has jurisdiction under 28 U.S.C.A § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause of Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C.A. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

Plaintiff Jerry Boyett, a minor child suing by his father and next friend, Wayne Boyett, filed a complaint in the Circuit Court for Crenshaw County, Alabama, on November 16, 1993, stating his causes in five counts. (CR 3-8) Count five alleged the following:

> 1. On or about the 13th day of September, 1993, the Plaintiff was attending school at Luverne High School and during school hours on school premises he suffered an immediate need to allow normal bowel and urinary functions due to diarrhea and so promptly sought permission from his classroom teacher, Defendant Lalar Tomberlin, to use the restroom.

2. The Plaintiff had a legal right to use the restroom on said occasion.

3. Defendant Lalar Tomberlin without just cause refused to give the Plaintiff permission to use the restroom, and a few minutes later Plaintiff renewed his request to use the restroom, and said Defendant again refused permission.

4. Plaintiff in response to the call of nature then and there proceeded to the restroom and relieved his suffering, notwithstanding the refusal of said Teacher to give him permission to do so.

5. The refusal to give such permission constituted a wanton aggravated invasion of the legal and constitutional rights of the Plaintiff, including but not limited to his right of privacy.

6. Defendant Lalar Tomberlin thereupon imposed disciplinary action of ten days detention against the Plaintiff due to his use of the restroom, and she subsequently refused to set aside this disciplinary action upon

Plaintiff's request to do so.

7. The disciplinary action appears as part of the Plaintiff's permanent school record and will thus be available for review for employment, military, education, and other purposes in the future.

3. The said conduct of Defendants while acting under color of law constituted deliberate indifference to the constitutionally protected rights of the Plaintiff with whom the state had contact and maintained a special or custodial relationship which existed between school and student, and it thus violated the Plaintiff's rights under the Fourteenth Amendment to the Constitution of the United States of America and was further violative of the express provisions under Title 42 of the United States Code, Section 1983.

4. On or before said date Defendant Crenshaw County Board of Education had contact with the Plaintiff by way of a special or custodial relationship under color of law and

> have delegated final policymaking authority with regard to administration of discipline in such matters to one or more of the other Defendants, or, in the alternative, said Board had with deliberate indifference to the Plaintiff's constitutionally protected rights failed to implement policies or practices necessary and appropriate to handle such matters, and such conduct of the Defendant Board constituted a violation of the Plaintiff's rights under the Fourteenth Amendment to the Constitution of the United States of America and was further violative of the express provisions under Title 42 of the United States Code, Section 1983.

Defendants filed an answer raising, among other things, the defense of sovereign immunity, discretionary function immunity, or qualified immunity. (CR 31-33) They later filed a motion for summary judgment, and this motion was granted in favor of the defendants. (CR 35-53, 60-64, 91-98, 102-103, 113-115) On appeal the Alabama Court of Civil Appeals affirmed this summary judgment on December 1, 1995, and

held as follows:

> The student argues that the teacher was not engaged in the exercise of a discretionary function because, he claims, a teacher has no discretion to refuse a student's request to go to the restroom. He maintains that "[w]hen the child needs to use the bathroom, there is no conceivable justification in denying him that need."
>
> * * *
>
> ...The teacher was entitled to immunity when she exercised her discretionary authority to refuse the student's request to leave the classroom. Likewise, when the principal determined what discipline should be imposed on the student for leaving the classroom without permission, and the superintendent upheld that disciplinary sanction, those administrators were also exercising discretionary functions, for which they have immunity. As to the state law claims, the summary judgments were proper

under the doctrine of discretionary immunity.

"To state a claim under § 1983, the plaintiff must allege facts constituting a deprivation of a constitutional right, under color of state law." Bonwell v. Bobo, 659 So. 2d at 102. Furthermore, in order to recover against a teacher or a school administrator under § 1983, a student must establish not only that he or she was deprived of a constitutional right, but also that the person who deprived him or her of that right did so in bad faith or with deliberate indifference to his or her rights. Id. Relying on Bonwell, the student claims that he was denied "a liberty interest in his bodily integrity," as well as a constitutional right to "privacy and freedom from humiliation and embarrassment."

In Bonwell, the Alabama Supreme Court held that students who had been sexually molested by a teacher had a § 1983 claim for violation of their substantive due process rights to bodily integrity. The facts of this case are a

> far cry from those in Bonwell. The Due Process Clause of the Fourteenth Amendment simply does not guarantee a student the right to be excused from a classroom upon demand, even if the asserted reason is to use the toilet. In this case, the student neither showed the deprivation of a constitutional right nor established bad faith or deliberate indifference on the part of the teacher and the administrators. The trial court properly entered the summary judgment as to the student's § 1983 claim.

Petitioner filed an application for rehearing on December 15, 1995, and the application raised the issue as follows:

> 5. The plaintiff has sufficiently stated a claim under Section 1983 by alleging facts constituting a deprivation of a constitutional right, that is, denial of a liberty interest in bodily integrity and violation of privacy and freedom from humiliation and embarrassment, under color of

state law with deliberate indifference to his rights.

Rehearing was denied without written opinion on January 12, 1996.

Petitioner then filed his petition for writ of certiorari in the Alabama Supreme Court and alleged as a ground for the issuance of the writ that the Court of Civil Appeals erred in holding "that a school teacher has discretionary immunity to refuse to allow a student to use a public school bathroom under urgent necessity due to diarrhea, and that Your Petitioner is not entitled to relief under 42 U.S.C. § 1983."

Certiorari by the Alabama Supreme Court was denied without opinion on May 31, 1996.

ARGUMENT

Boyett has been deprived of a liberty interest within the purview of the Fourteenth Amendment. The Due Process Clause of the Fourteenth Amendment protects him in his individual liberty against the type of government action demonstrated in this case. This "claim is grounded upon the premise that school children have a liberty interest in their

bodily integrity." Courtney Bonwell, et al. v. Thomas Bobo, et al., 659 So. 2d 98 (AL Supreme Court, 1995). Jerry Boyett had never missed a day in school that year due to illness. He had never asked the teacher to go to the bathroom before that incident. He was polite and respectful when he asked. However, on September 13, 1993, he woke up with diarrhea, but he went on to school, and two other teachers had excused him three times to use the bathroom earlier in the school day. (CR 91-98) His bodily integrity became an urgent and paramount concern. His bodily integrity not only involved his personal feelings and comfort, but it also related to his health, and not less importantly, to his privacy and freedom from humiliation and embarrassment. As it was, his underwear was soiled. If he had indeed yielded fully to the teacher's command, a huge embarrassment would have resulted. Instead, he yielded to the call of nature, as he should have done, and as a result he was unlawfully and unreasonably punished by the school authorities. These authorities have been uncompromising. They have refused to set aside the discipline, or to admit a mistake, or to apologize.

The Eleventh Circuit said in Arnold v. Board of Education of Escambia County, 880 F. 2d 305 (11th Cir. 1989):

"Students in our education system do not leave their constitutionally protected freedoms at the schoolhouse door. Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 506, 89 S.Ct. 733, 736, 21 L.Ed.2d 731 (1969). Indeed, the Supreme Court has recognized that "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' Shelton v. Tucker, 364 U.S. 479, 387, 81 S.Ct. 247, 251, 5 L.Ed.2d 231 (1960). Boards of education educate the young to be productive citizens. To ensure that important principles of our government are not discounted by our youth as mere platitudes, we must give scrupulous protection to their rights at an early stage. Tinker, 393 U.S. at 507, 89 S.Ct. at 736. From this, it is clear that the school officials and the board had a duty to respect the constitutional rights of Jane Doe.

Our system of ordered liberty regards individual autonomy with high esteem. Although many guarantees of individual

autonomy are specifically enumerated in the Bill of Rights, the Supreme Court has also found that these specific guarantees have penumbras emanating from them which give them life and substance. Griswold v. Connecticut, 381 U.S. 479, 484, 85 S.Ct. 11678, 1681, 14 L.Ed. 2d 510 (1965). These penumbral rights create zones of privacy within which we find the constitutional guarantees safeguarding an individual's freedom of choice in matters relating to marriage and family. Id; Roe v. Wade, 410 U.S. 113, 169, 93 S.Ct. 705, 735, 35 L.Ed.2d 147 (1973) (Stewart, J. concurring)."

The complaint here sufficiently stated a § 1983 claim and the facts support the claim, because it is shown:

1. Jerry Boyett was deprived of a constitutional right, that is, denial of a liberty interest in bodily integrity and violation of privacy and freedom from humiliation and embarrassment. A student undoubtedly has a right to use the restroom when needed, and this

right must surely be a liberty interest in his bodily integrity. Denial of this right plainly constitutes a violation of his privacy and an unlawful restriction of his freedom from humiliation and embarrassment.

2. The teacher and school personnel acted as state school employees and so their denial here was done under color of state law.

3. The acts of the teacher and school personnel were deliberate.

4. The acts demonstrated clear indifference to the physical needs, health, comfort, privacy, and emotional feelings of the child.

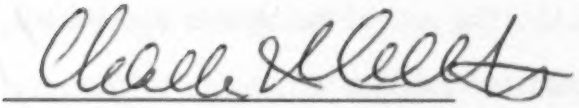
The particular facts in this case are unique, but the constitutional and statutory law applicable to the situation is well known.

The state courts of Alabama have decided an important federal question in a way that conflicts with relevant decisions of this Court. See Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed 2d 731 (1969); Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 5

L.Ed. 2d 231 (1960).

This is a case which merits review in order to make it clear that public school students are properly protected against abuses of institutional authority. The writ of certiorari should be granted.

Respectfully submitted,



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